IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

OP.No. 38236 of 2002(B)

PETITIONER:

USEF RAWTHER, AGED 54 YEARS,
S/O. LATE MEERAN RAWTHER, MOZHOOR HOUSE,
NEDUMKUNNAM, KOTTAYAM DISTRICT (P.D.TEACHER
GOVERNMENT HIGHER SECONDARY SCHOOL,NEDUMKUNNAM)

BY ADV. SRI.ESM.KABEER

RESPONDENTS:
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1. THE DEPUTY DIRECTOR OF EDUCATION,
KOTTAYAM.

2. THE ASSISTANT EDUCATIONAL OFFICER,
KARUKACHAL.

3. THE ACCOUNTANT GENERAL (A&E) KERALA,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SMT. SMITHA SUKUMAR

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 05/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO. 64536/2002 IN OP NO. 38236/2002 B.

DISMISSED

05/09/2007. **SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE PROCEEDINGS OF THE R2 DT. 10/3/95 GRANTING PROTECTION OF PAY.

EXT.P2. COPY OF THE RELEVANT EXTRACT OF THE AUDIT OBJECTION OF THE R3.

RESPONDENT'S EXHIBITS

NIL.

True copy

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THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.38236 OF 2002

Dated this the 5th day of September, 2007

JUDGMENT

Petitioner, while drawing pay in the senior grade scale of Rs.1220-2150, was promoted as Headmaster on 29.8.1990 and transferred to Kumbala in Kasargode. His pay was fixed at Rs.1,710/- on 29.8.1990 and it was re-fixed at Rs.1,770/- on 1.7.1991 in the higher scale of Rs.1330-2550. After working there for nearly two years, he requested for an inter-district transfer in terms of G.O.(MS) No.4 dated 8.1.1961. That was allowed and by order dated 29.7.1992, he was brought down as the junior most P.D. Teacher to the D.P.S., Vellara in Kottayam district on 18.8.1992. The last drawn pay was protected while making such transfer. Thereafter, in audit, it was observed that he continued to draw the pay of Headmaster on the basis of such protection, though he was working only as a P.D. Teacher. The impugned Ext.P2 is, therefore, issued by stating that such drawal of pay is against the rules, though no specific rule is referred to as having been violated. G.O.(MS) No.4 dated 8.1.1961, while providing the various conditions for an inter-departmental or

inter-unit transfer, provides that the incumbent may be allowed to count his previous service towards increment, leave, pension, gratuity etc. So much so, if the executive decides to grant him the benefit of protection of the pay drawn by him subject to his being placed as the junior most P.D. Teacher, that action cannot be found fault with. More so because, the petitioner had worked as the Headmaster for nearly two years after his promotion and posting to Kasaragode.

2. On the very peculiar facts and circumstances of this case, as noticed above, it will be inappropriate and would be unjust to provide any regulation on the drawals of the petitioner in terms of what is stated in Ext.P2.

For the aforesaid reasons, this writ petition is allowed quashing Ext.P2. All necessary consequences shall follow.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.38236 OF 2002

JUDGMENT

5th SEPTEMBER, 2007.

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